Interstate Truck Parts, Inc. *and* District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO, Petitioner. Case 5–CA–21367

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The central issue we address in this case is whether the Respondent, has committed such unfair labor practices as to warrant the imposition of a remedial bargaining order under the rationale of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). We agree with the judge's reasoning and conclusion that such an order is appropriate here.[1]

In June 1990, two of the three employees in the bargaining unit signed union authorization cards. Shortly after being informed that the union demand for recognition was supported by a majority of employees,[2] Cleland, the president and part owner of the Company, interrogated employees Myers and Poley in an agitated manner regarding whether they had signed union authorization cards. He then threatened that ''come Friday'' they would have ''a rude awakening'' and would be ''unhappy campers.'' Later, he threatened to cut their wages and benefits and alter their work schedules. At the same time, he also threatened to close the facility in order to avoid unionization.[3] He proceeded to carry out these threats[4] as well as discharge Myers, a union supporter.[5]

The Respondent's unlawful response to the advent of the Union shows a pattern of conduct which has been present in other cases where the Board and courts have found remedial bargaining orders appropriate. Thus, the Respondent's unfair labor practices affected all three members of the bargaining unit, were committed by the most senior company official, and had a continuing impact on unit employees.[6] See *Atlas Microfilming*, 267 NLRB 682 (1983), enfd. 753 F.2d 313 (3d Cir. 1985). See also *Electrical Products*, 239 NLRB 323 (1978), enfd. 617 F.2d 977 (3d Cir. 1980), cert. denied 449 U.S. 871 (1980); and *United Oil Mfg. Co.*, 254 NLRB 1320 (1981), enfd. 672 F.2d 1208 (3d Cir. 1982), cert. denied 459 U.S. 1036 (1983).

It is clear that traditional remedies which do not include a bargaining order will not likely be sufficient to eliminate the coercive effects of the Respondent's unlawful conduct or ensure a free and fair election. There is little possibility that reinstatement of Myers and the posting of notices could successfully dissipate the effect of the Respondent's unfair labor practices. Reimbursement cannot erase the impression left on employees of the power of the Respondent to effect their wages and conditions of employment in retaliation for union activities. Similarly, reinstatement with backpay will not erase the impression that the Respondent not only has the power to discharge its employees, but can delay litigation over its unfair labor practices and avoid unionization for over 2-1/2 years. Thus, the unfair labor practices committed will have a continuous effect on the ability of the employees to exercise their Section 7 rights and make a free choice in an election.[7]

Finally, a recurrence of the unfair labor practices appears likely. The Respondent's past practices demonstrate strong antiunion animus. The senior company official who committed the acts remains in place.[8]

Thus, the possibility of erasing the effect of the Respondent's past practices and ensuring a fair election

[1] On April 16, 1993, Administrative Law Judge Robert T. Wallace issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel submitted an answering brief. The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

[2] Signed authorization cards are reliable evidence of majority status. *Garry Mfg. Co.*, 242 NLRB 539, 545 (1979).

[3] The Respondent argued that there was no violation of Sec. 8(a)(1) because the employees did not feel threatened. However, the Board has long held that the Act is violated if the Respondent's statements would reasonably tend to interfere with employee rights under the Act, regardless of whether employees feel threatened. *El Rancho Market*, 235 NLRB 468, 471 (1978). The statements here meet this objective standard.

[4] Although the Respondent eventually reimbursed Poley and Troupe for lost wages, recission of any unlawful change does not remove the violation of the Act. *Hollander Home Fashions Corp.*, 225 NLRB 1098, 1103 (1981).

[5] The fact that Poley, who also signed a union authorization card, was not fired is irrelevant. Termination of a union activist serves to warn remaining employees that future union activities will not be tolerated. *NLRB v. Hale Container Line*, 943 F.2d 394 (4th Cir. 1991), enfg. 291 NLRB 1195 (1988).

[6] The Board and courts have found threats of plant closure, discharge of a union activist, and coercive interrogation to be unfair labor practices which are unlikely to dissipate and should be viewed as having a continued impact. *Hedstrom Co.*, 235 NLRB 1193 (1978), enfd. 629 F.2d 305 (3d Cir. 1980).

[7] The Respondent argues that employee turnover and the passage of time have erased the effects of its unfair labor practices. However, the Board has consistently stated that validity of a bargaining order depends on evaluation of the circumstances when the unfair labor practices were committed. In addition, employee turnover does not warrant withholding the bargaining order when turnover is insufficient to mitigate the effects of the employers actions and replacements are likely to learn of employer misconduct. See *International Door*, 303 NLRB 582 (1991). See also *Fun Connection & Juice Time*, 302 NLRB 740 (1991). Finally, the Board and the courts have consistently stated that delay is an unfortunate but inevitable result of the process of hearing, decision, and review. To deny enforcement on the basis of passage of time would encourage continued litigation. See *Hedstrom Co.*, supra. See also *L. B. Foster Co.*, 168 NLRB 83 (1969), enfd. 418 F.2d 1 (9th Cir. 1969), cert. denied 397 U.S. 900 (1970).

[8] The Board and the courts have found it to be significant that unfair labor practices are initiated by a senior company official and that the official remains in office. See *Atlas Microfilming Co.*, supra. See also *Mayfield Produce Co.*, 290 NLRB 1083 (1988).

by the use of traditional remedies is slight. Employee sentiment, once expressed through cards, is better protected by a bargaining order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Interstate Truck Parts, Inc., Lewisberry, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Marc A. Stefan and *Brenda Valentine Harris, Esqs*., for the General Counsel.

Thomas A. Beckley and *Charles O. Beckley II, Esqs*., for Respondent Company.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. The charge was filed July 26, 1990,[1] the complaint issued November 8, 1990, and the trial was in York, Pennsylvania, on June 27[2] and on November 17, 1991.

The complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act by interrogating employees about their union membership, and by threatening them with loss of benefits, closure, and other unspecified reprisals for seeking to be represented by the Union. In addition, Respondent is alleged to have violated Section 8(a)(3) by changing work schedules, eliminating benefits, and by discharging employee Jason Myers. A ''*Gissel*'' bargaining order[3] is sought.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, reconditions and sells truck parts at its facility in Lewisberry, Pennsylvania, where it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside the State of Pennsylvania. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At times pertinent to this proceeding, Respondent had a total of six employees. These include its part-owner/president Richard Cleland, Manager Ricky Knaub, secretary/clerk Deb Popp, and three nonsupervisory warehouse/counter/delivery persons: Myers, Donald Poley, and Jeff Troupe.

In June, Myers signed a card authorizing the Union to act as his collective-bargaining representative; and at his urging Poley also signed.

On July 17, Cleland received a letter in which the Union announced that it represented the majority of Respondent's employees and requested recognition.

In response to Cleland's early morning telephone inquiry on Wednesday, July 18, a representative of the Union told Cleland that the demand for recognition was supported by at least half of Respondent's employees. Cleland ended the conversation abruptly by hanging up.[4]

Shortly thereafter, Cleland saw Myers and Poley nearby and approached them. According to Poley, Cleland looked and sounded ''agitated.'' Myers agrees, stating that Cleland's face was red and his voice raised. Cleland asked them if they had signed union cards. When each replied, ''Yes,'' he told them they had backed him into a corner and that, come Friday, they would have a ''rude awakening'' and be ''unhappy campers.''

Later that day in the shop area, Cleland told Myers and Poley he was going to change their morning start time from 8 to 5:30 a.m., cut their pay to $5 an hour, and take away all their benefits. When Myers protested, Cleland cut him off, saying, ''I'll do whatever I want!'' Later still, in the office, Cleland told Poley he did not want a union in the shop and would close down to avoid that situation. Cleland did not deny making those statements.

And before the day ended, Cleland prepared a document which reads as follows:

> EFFECTIVE AUGUST 1, 1990
>
> Due to financial difficulties we are forced to make changes in employee benefits and wages. These changes will be:
>
> NO paid vacations
> NO paid holidays
> NO paid medical insurance
> Salary reduction to $5 per hour (Effective on Aug. 3 check)
>
> We are sorry for any inconvenience this may cause, but due to the current circumstances it cannot be avoided.

The notice, without further explanation, was given to employees in the same envelope with their paychecks on Friday, July 20. Also included were separate notes, one informing Myers that, effective Monday, July 23, his Monday through Friday workweek was changed to Tuesday through Saturday, and the other telling Poley that his regular starting time would be 5:30 a.m. Poley and Troupe, accompanied by Manager Knaub, promptly went to Cleland and asked for an ex-

[1] All dates are in 1990 unless otherwise indicated.

[2] On this date, Respondent having failed to comply with a subpoena duces tecum, hearing was postponed indefinitely to permit the Board to seek enforcement. On September 18, 1991, the United States District Court for the Middle District of Pennsylvania directed Respondent to comply after placing limitations on its obligation to provide customer lists. On April 17, 1992, the United States Court of Appeals for the Third Circuit affirmed the District Court.

[3] See *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

[4] Cleland claims he threw the letter in the trash can without reading it. He wasn't sure whether he called the Union. However, he recalls a phone call in which he told a union representative he was ''not interested.''

planation. Cleland assured them that it was a temporary situation based on a bankruptcy filing by a customer, ''TransCon.''[5]

Following his new schedule, Myers did not report to work on Monday; and when he arrived at the shop on Tuesday, July 24, he noticed two new employees at work. Shortly thereafter, he was directed to the office. There, Cleland told him he was no longer needed. When Myers inquired as to why, Cleland waived a paper and retorted, ''Which of the forty do you want?'' Myers said all of them, and Cleland began to read from the paper. After mentioning tardiness, failing to come to work ''one day,'' and refusing to do a brake delining job, Cleland paused as if to say, ''Is that enough?'' Myers asked for a copy of the paper. Cleland replied that he didn't have time to stand around reading and that he would have the secretary give him one in the same envelope with his severance check. That was not done, and Myers departed without being given any other reason for his termination. Cleland did not dispute Myers' account of his termination interview.

A. *Analysis*

1. Violations of Section 8(a)(1)

Coming as they did 1 day after the Union's written demand for recognition and uttered in anger, President Cleland's statements to Myers and Poley on July 18 were patently unlawful. His asking them if they signed union cards constitutes coercive interrogation. *O.K. Trucking Co*., 298 NLRB 804, 809 (1990); *Hudson Neckwear*, 302 NLRB 93 (1991). Telling them that their union support backed him into a corner and that they would be unhappy campers come Friday is an implied threat of retaliation for engaging in protected activities. *M. K. Morse Co*., 302 NLRB 924 (1991). His statement that their pay and benefits would be reduced and that their starting time would be advanced to 5:30 instead of 8 a.m. was an explicit threat of retaliation. *St. Vincent's Hospital*, 244 NLRB 84, 92 (1979). Finally, Cleland's threat to close down to avoid unionization is a ''hallmark'' violation. *Matheson Fast Freight*, 297 NLRB 63, 68–69 (1989).

Respondent's claim that the interrogation and threats were not unlawful because the employees did not ''really believe them'' lacks merit. Since long ago it has been the rule that whether or not an effort to coerce employees was successful is irrelevant to whether the statements or action reasonably tend to interfere with their protected rights. *American Freightways Co*., 124 NLRB 146, 147 (1959). It is the rule today. As stated in *O.K. Trucking Co*., supra at 804 fn. 2:

> ''[T]he Board does not consider such subjective reactions, but rather whether, under all the circumstances the [employer's statement] reasonably tends to restrain, coerce or interfere with rights guaranteed under the Act.''

And it was the rule in between long ago and today. Thus, in *Seneca Foods Corp*., 244 NLRB 558, 562–563 (1979), the Board states:

> ''[T]he testimony that the employees did not feel or act scared or intimidated by the comments directed to them . . . [is irrelevant] . . . the test is whether the employer's conduct may reasonably be said to have the tendency to interfere with the free exercise of employee rights.''

2. Violations of Section 8(a)(3)

a. *Lost wages/benefits*

It is undisputed that immediately on receiving the Union's demand for recognition, Respondent, through President Cleland, informed its employees that their paid vacations, holidays, and medical insurance would be eliminated, their pay reduced, and their work schedules significantly changed. Those actions represent the typical situation of a respondent who ''on learning of its . . . employees' effort to secure representation, took strong retributive actions to prevent their securing same.'' *Seven-Up Bottling Co*., 235 NLRB 297, 304 (1978).

Respondent defends its actions by sailing on two different tacks. First, Cleland asserts legitimate business reasons; and, second, he claims there is no violation because the benefit and schedule changes never took effect and the pay cut was reimbursed. The first effort founders on the shoals of Cleland's contradictory, inconsistent, and incredible testimony, while the second crashes on salient rocks of fact.

As to business necessity, he claims that cutbacks were prompted by an immediate need to compensate for a $35,000 loss incurred following bankruptcy of an important customer. But Cleland states that his accountant advised him of the problem in May or June, well before he acted to implement cutbacks on July 18, 1 day following receipt of the Union's demand for recognition. Also, the timing of that action is inconsistent with his admitted hiring of two new employees on July 23, an act which belies the claimed financial crunch. *Fedco Freightlines*, 273 NLRB 399, 400–401 (1984). In these circumstances, and since no financial records were presented, I decline to credit the claim.

Equally unavailing is Respondent's assertion that there can be no violation because all the announced changes were rescinded. However, at least some became effective albeit for short periods, and that is sufficient to constitute actual discrimination within the meaning of Section 8(a)(1). *Hollander Home Fashion Corp*., 255 NLRB 1098, 1103 (1981); *Georgia Hosiery Mills*, 207 NLRB 781 (1973). Thus, Myers followed his new schedule and lost wages by not reporting to work on Monday, July 23, and other employees suffered loss of income until (assertedly) fully reimbursed weeks later.

b. *Myers' discharge*

The evidence establishing a prima facie showing of unlawful motive in the discharge of Myers is overwhelming. It is undisputed that he engaged in a protected union activity (signing a union authorization card) and that Cleland learned about it through his unlawful interrogation. The requisite antiunion animus is demonstrated by the coercive threats and retaliations discussed above. Finally, the timing of the dis-

[5] The employees were paid at the new hourly rate at least in checks received on August 3. Respondent claims that within an ensuing 2- to 4-week period he restored their prior hourly rates and reimbursed them for all wages lost during the interim. It also claims that the other changes decreed on July 20 never took effect.

charge is telling, occurring shortly after the Union's demand for recognition and Cleland's being made aware of the impact removal of one known union supporter from a three-person unit would have on the Union's demand.

Accordingly, Respondent has the burden of demonstrating that the discharge of Myers on July 24 would have occurred even apart from his involvement with the Union. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). It has failed in that regard.

On July 24, Cleland gave Myers three reasons. The first, tardiness, derives from timecard data showing that over the 13 months of his employment he was late punching in on 35 occasions. Of those, 25 were for 5 minutes or less, 9 were for less than one-half hour, and 1 (on March 20) was for 38 minutes. Myers was docked 15 minutes' pay for each instance of tardiness occurring within 15-minute increments, and at no time did Respondent ever inform him that continued lateness would result in discharge. The second, an absence for 1 day, was not accompanied by a date; so Myers, and we, are left to speculate as to which absence[6] was referred to and whether he had permission. The third reason, refusing to do a brake delining job, was understood by Myers to refer to an incident which occurred on May 4; and, even assuming a dereliction, no reason is given as to why in this matter, as well as the others, discipline was delayed until July 24.

At the trial, Cleland provided a laundry list of additional reasons for the discharge. Of those, the most recent cited instance involved a claimed late delivery on Tuesday, July 17, a full week prior to his discharge and another admittedly was newly discovered several weeks after the discharge. He had secondhand knowledge of circumstances surrounding a number of the events, and persons directly concerned (Manager Knaub and secretary Popp) were not called as witnesses. See *Bay Metal Cabinets*, 302 NLRB 152 (1991). And his attempt to bolster his vague testimony about other incidents on the list was abortive.[7]

B. *Bargaining Order*

At the time pertinent to this proceeding, Respondent employed three warehouse/counter/delivery persons: Myers, Poley, and Troupe. Apart from management personnel, the three individuals comprised the entire work force when the Union demanded recognition. Accordingly, the unit of warehouse/counter/delivery persons constitutes an appropriate unit for purposes of collective bargaining.

The record also establishes that two of the three unit employees signed union authorization cards prior to the Union's demand for recognition on July 17. Therefore, for *Gissel* purposes, the only remaining question is whether ''Respondent's unlawful conduct warrants the imposition of a *Gissel* bargaining order to protect the employees' majority selection of a bargaining representative based on authorization cards.'' *Bakers of Paris*, 288 NLRB 991 (1988). In view of the nature of the unfair labor practices detailed above, I conclude that a bargaining order is both necessary and appropriate.

President Cleland's reaction on learning that a majority of his employees had signed authorization cards was to coercively interrogate employees to determine who supported the Union. And promptly thereafter, he instituted a series of draconian pay and benefit reductions which were directly linked by him to the Union's organizational effort. Then, to assure that the Union's majority would not remain intact, he discharged one of the two known union supporters. Such unfair labor practices are a prototypical basis for imposition of a bargaining order.

In broad terms, the ''swiftness, severity, and extensiveness of Respondent's unfair labor practices, [make it] highly unlikely that its employees would be willing or able freely to express their choice in [an] election.'' *Bakers of Paris*, supra; *Mayfield Produce Co*., 290 NLRB 1083 fn. 3 (1988). Here, Cleland's reaction to the recognition demand was immediate, ruthless, and impacted on the entire unit. More specifically, his discovery of their organizational efforts caused him to subject the employees to threats that they would be ''unhappy campers'' for having backed him ''into a corner.'' And true to his word, within 2 days they had notice of a pay cut, new starting time (5:30 instead of 8 a.m.), and elimination of paid vacations, holidays, and medical insurance. The immediate imposition of harsher terms and conditions of employment following an employer's learning of an organizing effort is a classic indicia of a situation where a bargaining order is appropriate. *Garry Mfg. Co*., 242 NLRB 539 (1979), enfd. 630 F.2d 934 (3d Cir. 1980). See also *Standard-Coosa-Thatcher, Inc*., 257 NLRB 304, 305 (1981), enfd. 691 F.2d 1133 (4th Cir. 1982).

In addition, Cleland threatened to close the facility rather than allow unionization. Threats of closure are another ''hallmark'' violation of the Act, *Long-Airdox Co*., 277 NLRB 1157, 1160 (1985), and such a threat is ''one of the most coercive actions which a company can take . . . .'' *Donn Products v. NLRB*, 613 F.2d 162 (6th Cir. 1980).

Further, discharge of a key union supporter because of his protected activity is misconduct which goes ''to the very heart of the Act.'' *Penn Color, Inc*., 261 NLRB 395, 396 (1982), citing *NLRB v. Entwistle Mfg. Co*., 120 F.2d 532, 536 (4th Cir. 1941). Significantly, the discharge and other violations were conceived and carried out by Respondent's president. *Eddyleon Chocolate Co*., 301 NLRB 887, 891 (1991).

In sum, it is abundantly clear that a majority of the employees clearly and unambiguously expressed their desire to be represented by the Union for purposes of collective bargaining. When Respondent learned of that development, it reacted swiftly and severely to frustrate their efforts through threats, reducing pay, announcing onerous schedule changes, and loss of major benefits and, finally, discharging a union supporter known to be critical to the Union's majority. The

[6] At the trial, Cleland claimed Myers took unauthorized absences on October 17, 1989, and on June 9 and 29. Myers' personnel file contains a reference to only one of the three alleged ''no-call, no-show'' incidents, and that document reflects that his being off on June 29 was approved by Secretary Popp.

[7] In response to a question of Respondent, counsel, Cleland volunteered that a lot of the information used in preparing the list came from contemporaneous notations he made in his personal diary. The diary was not made available to the General Counsel prior to or during trial despite the court order to comply with language in a subpoena requiring production of ''All . . . documents [defined as including diaries] made or received by any supervisor, agent or management official relating to the decision to discharge Jason Myers . . . .''

deep and lasting effect of those actions preclude any real possibility that a free and fair election could he held by application of remedies which do not include a bargaining order.

CONCLUSIONS OF LAW

I find that Respondent violated the Act in the particulars and for the reasons stated above. I further find that those unfair labor practices and each of them have affected, are affecting, and unless permanently enjoined will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act. And I further find (1) that the following employees of Respondent constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

> All warehouse/counter/delivery persons employed by Respondent at its Lewisberry, Pennsylvania location, excluding office clerical employees and guards and supervisors as defined by the Act;

(2) that on or about July 13, 1990, a majority of employees in the unit selected District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO as their representative for purposes of collective bargaining; (3) that since then the named Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the unit for purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment; and (4) that the unfair labor practices found to have been committed are so serious and substantial in character that the possibility of erasing their effects and of conducting a fair election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards, would, on balance, be protected better by issuance of a bargaining order than by recourse to traditional remedies.

REMEDY

In addition to the customary cease-and-desist order and requirement for notice posting my order will require Respondent (1) to offer permanent, immediate, and unconditional reinstatement to Jason Myers and make him whole for his discriminatory and unlawful discharge, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987); (2) in the same manner to make other employees whole for any economic loss sustained by them pursuant to unlawful reductions in wages and benefits and schedule changes announced on July 20, 1990; and (3) to recognize and, on request, bargain with District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive representative of its employees in the named unit in regard to terms and conditions of employment and, if understanding is reached, embody the understanding in a signed agreement.

Because the serious and egregious misconduct shown here demonstrates a general disregard for the employees' fundamental rights, I find it necessary to issue a broad order requiring Respondent to cease and desist from infringing in any manner on the rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

Disposition

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Interstate Truck Parts, Inc., Lewisberry, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from discouraging membership in, activities on behalf of, or sympathies towards District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO or any other labor organization by

(a) Interrogating any employee about union support or union activities.

(b) Threatening employees with loss of wages, benefits, schedule changes, shop closure, and unspecified reprisals.

(c) Reducing wages, eliminating benefits, and effecting schedule changes.

(d) Discharging or otherwise disciplining employees.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Jason Myers immediate reinstatement to his former position of employment or, if such position no longer exists, to a substantially equivalent position, without prejudice to seniority or other rights and privileges previously enjoyed, and remove from its files any reference to his unlawful discharge and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(b) Make Jason Myers whole for any loss of pay that he may have suffered as a result of his discharge in the manner set forth in the remedy section of this decision.

(c) In the same manner make other employees whole for any economic loss sustained by them pursuant to the unlawful reductions in wages and benefits and schedule changes announced on July 20, 1990.

(d) On request, bargain with District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive representative of the employees in the following appropriate unit:

> All warehouse/counter/delivery persons employed by Respondent at its Lewisberry, Pennsylvania location, excluding office clerical employees and guards and supervisors as defined by the Act;

concerning terms and conditions of employment; and, if an understanding is reached, embody the understanding in a signed agreement.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Lewisberry, Pennsylvania, copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

In recognition of these rights, we notify our employees that:

WE WILL NOT coercively interrogate you as to whether you sympathize with or support District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO or any other union.

WE WILL NOT threaten you with loss of wages, benefits, schedule changes, shop closure, and unspecified reprisals because you sympathize with or support unionization.

WE WILL NOT reduce wages, eliminate benefits, or make schedule changes because you sympathize with or support unionization.

WE WILL NOT discharge or otherwise discriminate against you because you sympathize with or support unionization.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Jason Myers immediate reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to seniority or other rights and privileges previously enjoyed, and remove from our files any reference to his unlawful discharge and notify him in writing that this has been done and that the discharge will not be used against him in any way, and WE WILL make him whole for any loss of pay that he may have suffered as a result of his unlawful discharge.

WE WILL make Jason Myers, Donald Poley, and Jeff Troupe whole for any economic loss sustained by them pursuant to the unlawful reductions in wages and benefits and schedule changes we announced on July 20, 1990.

WE WILL, on request, bargain with District Lodge 98, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive representative of our employees in the following appropriate unit:

> All warehouse/counter/delivery persons employed by us at our Lewisberry, Pennsylvania location, excluding office clerical employees and guards and supervisors as defined by the Act;

concerning rates of pay, hours of work, and other terms and conditions of employment; and, if an understanding is reached, on request, embody the understanding in a signed agreement.

INTERSTATE TRUCK PARTS, INC.